Father Stan Swamy - Rights of Prisoners with Disabilities

What is the issue?

- Father Stan Swamy, the 83-year-old activist (who suffers from Parkinson's disease), lodged in Mumbai's Taloja prison, was denied a sipper and straw.
- Denying a prisoner with disabilities his recognised rights is a legal wrong and a display of a lack of compassion.

Who is Father Stan Swamy?

- Fr. Stan Lourduswamy S.J., is an Indian Roman Catholic priest and a tribals rights activist for several decades.
- The 83-year-old activist was arrested by the National Investigation Agency (NIA) in October 2020.
- He is alleged to have involved in the 2018 Bhima Koregaon violence.
- He is charged under the Unlawful Activities (Prevention) Act, 1967.

What is the controversy over the sipper and straw?

- Father Swamy reportedly made an application to be provided with a sipper and straw as he was unable to hold a glass as he was suffering from Parkinson's disease.
- His request was inexplicably deferred for 20 days.
- The NIA later informed the court that it did not have a straw and sipper to give to him.
- The court has sought a report from the jail authorities on allowing Father Swamy to receive a straw and sipper at his own cost.
- However, subsequent reports said that Father Swamy had been provided with a sipper and straw by the jail authorities.
- Nevertheless, given Father Swamy's allegations, a fuller examination is merited by the court.

Why is it significant?

- The above events demonstrate the insensitivity of legal procedure.
- Apart from this, it outlines another fundamental issue which is the **rights of prisoners with disabilities**.
- While confinement/imprisonment itself is not easy, it is significantly more difficult for persons with disabilities.

- The difficulties persons with disabilities face in society are exacerbated in prison, given the nature of overcrowded and underfunded prison environments.
- It is precisely for this reason that both international and domestic laws recognise and protect the rights of disabled prisoners.

What are the laws in this regard?

- **UNCRPD** - Under international law, it is the UN Convention on the Rights of Persons with Disabilities (CRPD).
- It applies to all persons with disabilities including detainees and prisoners.
- It imposes a positive obligation on authorities, including prison staff, to ensure that prisoners with disabilities are -
    i. on an equal basis with others
    ii. entitled to guarantees in accordance with international human rights law
    iii. treated in compliance with the objectives and principles of the convention, including by provision of reasonable accommodation
- The obligation encompasses the provision of auxiliary aids relevant to the disability.
- This is to secure the inherent dignity of the prisoner to enable them to live independently and participate in all aspects of their daily lives.
- In cases where such provision is not made by prison authorities, it may amount to a breach of a state's obligation.
- India is a signatory to this.
- **ICCPR** - The above obligations are complemented by the provision of Article 10 of the International Covenant on Civil and Political Rights (ICCPR).
- The Nelson Mandela Rules on the standard minimum rules for the treatment of prisoners was also approved by the UN through a resolution in 2015.

What are the legal provisions in India?

- The constitutional guarantees to persons with disabilities are available under Articles 14 and 21.
- Apart from this is the specific Indian legislation, the Rights of Persons with Disabilities Act, 2016.
- This was enacted with the objective of giving effect to the CRPD.
- This also requires that persons with disabilities enjoy the right to equality, life with dignity and respect for integrity equally with others.
- The Act also enjoins the state to take necessary steps to protect persons with disabilities from being subjected to torture, cruel, inhuman or degrading treatment.
- It also provides for taking necessary steps to ensure reasonable

accommodation for persons with disabilities.

- The Act does not specifically provide for persons with disabilities who are incarcerated.
- However, given the object of the legislation to give effect to the CRPD, it would even encompass prisoners.
- Notably, the Act explicitly recognises Parkinson's disease as specified disability in its Schedule.

Why does Swamy's case need attention?

- The denial of aids such as a sipper and straw to Father Swamy is arguably inconsistent with both domestic and international law.
- The injustice in his case is magnified by the fact that he still awaits trial.
- The fundamental tenet on which Indian criminal law operates is that an accused is presumed innocent until proven guilty.
- His guilt or innocence is ultimately a matter for the court to decide.
- But the denial of his rights by the justice system not only constitutes a legal wrong but also displays an absence of compassion.

Source: The Hindu

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